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Attorneys for Defendants Mark Cassidy and Joshua Wilding

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

GREAT BOWERY, d/b/a TRUNK
ARCHIVE,

Plaintiff,

v.

BEST LITTLE SITES, d/b/a
www.comicbookmovie.com; NATHAN
BEST; MARK CASSIDY; JOSHUA
WILDING; and DOES 1 through 10,
inclusive,

Defendants.

**DEFENDANT MARK CASSIDY'S
ANSWER TO COMPLAINT**

Case No. 2:21-cv-00567-JNP-JCB

Judge Jill N. Parrish

Magistrate Judge Jared C. Bennett

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant Mark Cassidy ("Defendant"), for himself alone and for no other defendant, respectfully submits the following answer and affirmative defenses to the Complaint by Plaintiff Great Bowery d/b/a Trunk Archive ("Plaintiff").

PARTIES

1. Defendant lacks personal knowledge or information sufficient to form a belief as to Plaintiff's organization status or place of business.

2. Defendant lacks personal knowledge or information sufficient to form a belief as to Defendant Best Little Sites, LLC's organization status or principal place of business.

3. Defendant admits that Defendant Nathan Best is an individual, but lacks personal knowledge or information sufficient to form a belief as to Mr. Best's residential address.

4. Admit.

5. Defendant admits that Defendant Joshua Wilding is an individual, lacks personal knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and on that basis denies each and every such allegation..

6. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that any of the remaining allegations contained in this paragraph can be considered factual assertions, Defendant lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

JURISDICTION AND VENUE

7. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that any of the remaining allegations contained in this paragraph can be considered factual assertions, Defendant lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

8. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that the allegation contained in this paragraph can be considered a factual assertion, Defendant denies such allegation.

9. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that the allegation contained in this paragraph can be considered a factual assertion, Defendant denies such allegation.

10. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that the allegation contained in this paragraph can be considered a factual assertion, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation of this paragraph and on that basis denies such allegation.

11. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that the allegation contained in this paragraph can be considered a factual assertion, Defendant denies such allegation.

FACTUAL BACKGROUND

12. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

13. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

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26. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

27. Admit.

28. Admit.

29. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

30. Admit.

31. Admit.

32. Admit.

33. Defendant admits that paid contributors are compensated each month, but denies that contributors are eligible for bonus and other incentives based on the content they create to CBM's Website.

34. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

35. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

36. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

37. Admit.

38. Admit.

39. Admit.

40. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

41. Admit.

42. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

43. Defendant admits that he is a contributor to the Website, but denies that he is a paid editor.

44. Defendant admits that he is expressly authorized by CBM to create content for the Website, but denies that he is authorized by CBM to edit any content other than his own.

45. Admit.

46. Admit.

47. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

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76. Deny.

FIRST CAUSE OF ACTION

77. Defendant incorporates by this reference each and every admission and denial set forth above, inclusive, as though fully stated herein.

78. Defendant lacks personal knowledge or information sufficient to form a belief as to the truth of each and every allegation of this paragraph and on that basis denies each and every such allegation.

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83. This paragraph consists of legal conclusions that do not require a response or denial. To the extent that any of the remaining allegations contained in this paragraph can be considered factual assertions, Defendant denies each and every such allegation.

84. Deny.

85. Defendant admits that Plaintiff is seeking a declaration and injunction, but denies each and every other allegation in this paragraph.

PRAYER FOR RELIEF

86. Defendant denies that Plaintiff is entitled to any of the relief sought in its Prayer for Relief.

AFFIRMATIVE DEFENSES

AFFIRMATIVE DEFENSE NO. 1

Plaintiff fails to state claims for which relief can be granted.

AFFIRMATIVE DEFENSE NO. 2

Plaintiff's claims are barred because there is no damage which stems directly or indirectly from any conduct complained of in the Complaint.

AFFIRMATIVE DEFENSE NO. 3

Plaintiff's claims are barred because they run contrary to public policy.

AFFIRMATIVE DEFENSE NO. 4

Plaintiff's claims are barred by Plaintiff's failure to mitigate damages (should any damages exist).

AFFIRMATIVE DEFENSE NO. 5

Plaintiff's claims are barred by the Safe Harbor provisions of the Digital Millennium Copyright Act because the CBM is a service provider and the accused content was posted, stored, transmitted, or otherwise made available at the direction of a user.

AFFIRMATIVE DEFENSE NO. 6

Plaintiff's claims are barred by the doctrine of collateral estoppel, res judicata, issue preclusion, claim preclusion, and claim splitting.

AFFIRMATIVE DEFENSE NO. 7

Plaintiff's claims are barred because Defendant did not have actual knowledge of the alleged infringement or knowledge of facts or circumstances from which infringing activity is apparent.

AFFIRMATIVE DEFENSE NO. 8

Plaintiff's claims are barred because Defendant did not materially contribute to any alleged infringement.

AFFIRMATIVE DEFENSE NO. 9

Plaintiff's claims are barred because Defendant did not know or intend for his actions to lead to infringement of any of Plaintiff's copyrights.

AFFIRMATIVE DEFENSE NO. 10

Plaintiff's claims are barred because CBM acted expeditiously to remove and/or disable access to the photographs at issue upon obtaining knowledge or awareness of the alleged infringement.

AFFIRMATIVE DEFENSE NO. 11

Plaintiff's claims are barred because Plaintiff did not submit a compliant DMCA take-down notice in connection to the photographs at issue.

AFFIRMATIVE DEFENSE NO. 12

Plaintiff's claims are barred because the photographs at issue were not stored and/or did not reside on a system or network controlled or operated by Defendant.

AFFIRMATIVE DEFENSE NO. 13

Plaintiff's claims are barred because the alleged damages, if any, were proximately caused by act or omissions, negligence, or intentional acts by third parties over whom Defendant had no control or right of control or, if Defendant had any right of control, were acting beyond the scope of any relationship with Defendant, or such damages were caused by conditions or events over which Defendant had no control or right of control.

AFFIRMATIVE DEFENSE NO. 14

Plaintiff's claims are barred because of Plaintiff's own bad faith or unlawful actions.

AFFIRMATIVE DEFENSE NO. 15

Plaintiff's claims are barred under the doctrine of unjust enrichment.

AFFIRMATIVE DEFENSE NO. 16

Plaintiff's claims are barred because Defendant's infringement, if there was infringement, was not malicious, deliberate, consciously wrongful, or done in bad faith.

AFFIRMATIVE DEFENSE NO. 17

Plaintiff's claims are barred under the doctrine of unclean hands.

AFFIRMATIVE DEFENSE NO. 18

Plaintiff's claims are barred because Defendant acted in good faith and was justified in his actions.

AFFIRMATIVE DEFENSE NO. 19

Plaintiff's claims are barred because Plaintiff inflicted its own harm and through its acts or omissions was the sole cause or the proximate cause of the damages complained.

AFFIRMATIVE DEFENSE NO. 20

Plaintiff's claims are barred because Defendant did not have the right and ability to supervise the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

AFFIRMATIVE DEFENSE NO. 21

Plaintiff's claims are barred because Defendant did not have a direct financial interest in the allegedly infringing activity sufficient to confer vicarious liability for the allegedly infringing activity.

AFFIRMATIVE DEFENSE NO. 22

Plaintiff's claims are barred because of the equitable doctrines of laches and waiver.

AFFIRMATIVE DEFENSE NO. 23

Plaintiff is not entitled to any relief because it has engaged in copyright misuse, including for the purpose of stifling competition.

AFFIRMATIVE DEFENSE NO. 24

Defendant's actions and/or conduct are protected by the First Amendment of the United States Constitution.

AFFIRMATIVE DEFENSE NO. 25

Defendant's actions and/or conduct are protected by the fair use doctrine.

AFFIRMATIVE DEFENSE NO. 26

Plaintiff's claim for copyright infringement is barred, in whole or part, because its alleged copyrights are invalid.

AFFIRMATIVE DEFENSE NO. 27

Plaintiff is not entitled to any monetary relief because the damages sought by Plaintiff are entirely speculative.

AFFIRMATIVE DEFENSE NO. 28

Defendant's actions and/or conduct are protected by the doctrine of *de minimis* use.

RESERVATION OF DEFENSES

Defendant reserves his rights to add further affirmative defenses that may be discovered during the litigation.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE Defendant respectfully requests:

1. Entry of judgment that Defendant has not directly, vicariously, or contributorily infringed any copyright owned or asserted by Plaintiff;
2. Entry of judgment that Defendant has not induced infringement of any copyright owned or asserted by Plaintiff;
3. Entry of judgment that Defendant has not willfully infringed any copyright owned or asserted by Plaintiff;
4. Entry of judgment for costs and reasonable attorney fees incurred by Defendant;
and
5. Such other and further relief as the Court may deem appropriate.

DATED this 15th day of July, 2022.

AKERMAN LLP

By: /s/ Robert H. Scott
Robert H. Scott (USB #10981)

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(*pro hac vice*)
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Los Angeles, California 90071
Telephone: (213) 533-5949
Email: caroline.mankey@akerman.com

*Attorneys for Defendants Mark Cassidy
and Joshua Wilding*

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2022, I caused a true and correct copy of the foregoing **DEFENDANT MARK CASSIDY'S ANSWER TO COMPLAINT** to be filed via the Court's CM/ECF system which provided electronic notice of such filing to all persons registered to receive notice in this case.

/s/ Robert H. Scott